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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/689,459	10/12/2000	Arthur M. Tofani, Jr.	E-1902	7967

7590 03/19/2002

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EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 03/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/689,459

Applicant(s)

TOFANI, JR. ET AL.

Examiner

Jeffrey L. Gellner

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 1-21 and 31-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

PETER M. POON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3300

*for P*

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

Acknowledgement is made of Applicant's IDSs entered 6 April 2001 and 6 September 2001 as paper numbers 2 and 3, respectively.

### ***Election/Restrictions***

Applicant's election of Invention II in Paper No. 5 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 1-21 and 36-48 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Invention I, the apparatus. On further consideration, Claims 31-35 are considered to be drawn to an apparatus, *i.e.*, nonelected Invention I. Hence, these claims are also withdrawn from examination.

### ***Specification***

The disclosure is objected to because of the following informalities:

On page 14, line 10, "user=s" should be --user's--.

On page 16, line 9, "plant=s" should be --plant's--.

Appropriate correction is required.

### ***Claim Objections***

Claims 25 and 29 are objected to because of the following informalities:

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In Claims 25 and 29, line 3, the term "positive rotation" is confusing. A less confusing term would be --forward rotation-- as opposed to the "reverse rotation" of Claims 24 and 28.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 22 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Winn (US 1,606,860).

As to Claim 22, Winn discloses an apparatus (Fig. 3) for eliminating unwanted vegetation growth comprising a reservoir (1 of Fig. 3) providing for a herbicide or pesticide; means for selectively delivering (4 of Fig. 4) the herbicide from the reservoir to an applicator (18 of Fig 3); the applicator directly in contact with a surface (col. 1 lines 1-7 and col. 2 lines 100-105); and, regulating the flow of said herbicide delivered by the applicator to the surface (defined as manipulating the movement of spring 17; see col. 2 lines 78-81); wherein the device applies to herbicide to unwanted plants (col. 1 lines 1-7). When used to carry pesticide, insects would inherently crawl where the material is applied. The apparatus of Winn inherently performs the method steps of Claim 22 when used.

As to Claim 27, Winn further discloses an overcap which covers the applicator (13 of Fig. 1).

Claims 22, 26, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Moore (US 4,947,580).

As to Claim 22, Moore discloses an apparatus (Figs. 20-23) for eliminating unwanted vegetation growth comprising a reservoir (201 of Fig. 20) providing for a herbicide or pesticide; means for selectively delivering (209 of Fig. 21) the herbicide from the reservoir to an applicator (204 of Fig. 3); the applicator directly in contact with a surface (abstract); and, regulating the flow of said herbicide delivered by the applicator to the surface (defined as size of element 209 in Fig. 23); wherein the device applies to herbicide to unwanted plants (abstract). When used to carry pesticide, insects would inherently crawl where the material is applied. The apparatus of Moore inherently performs the method steps of Claim 22 when used.

As to Claims 26 and 30, Moore further discloses squeezing the reservoir (col. 9 lines 19-27) with a regulatable valve (209 of Fig. 3).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winn (US 1,606,860).

As to Claim 23, the limitations of Claim 22 are disclosed as described above. Not disclosed is the use of oil-based herbicides. Examiner takes official notice that it is old and

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notoriously well known in the pesticides art to use oil base herbicides in herbicide applicators are use. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Winn by using the apparatus with oil-based herbicides so as to apply the desired and most effective herbicide. The apparatus of Winn inherently performs the method step of Claim 23 when used.

Claims 24, 25, 28, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winn (US 1,606,860) in view of Ostrowsky (US 3,993,208).

As to Claim 24, the limitations of Claim 22 are disclosed as described above. Not disclosed is a safety cover means with securing means of rotating the cover means past a predetermined stop to block reverse rotation. Ostrowsky, however, discloses the use of a cover means (36 of Fig. 1) with a securing means (20 and 51 of Fig. 1) of rotating the cover means past a predetermined stop to block reverse rotation. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Winn by including a cover means with securing means that blocks reverse rotation as disclosed by Ostrowsky so as to deny access to children (see Ostrowsky col. 1 lines 5-10). The apparatus of Winn as modified by Ostrowsky inherently performs the method step of Claim 24 when used.

As to Claim 25, Winn as modified by Ostrowsky further disclose application of a force to a portion of the cover means to enable positive rotation to release it from the reservoir (see Ostrowsky col. 4 lines 12-33).

As to Claim 28, the limitations of Claim 22 are disclosed as described above. Not disclosed are a safety cover means that fits on the reservoir and is rotatable past a predetermined

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stop to block reverse rotation. Ostrowsky, however, discloses the use of a cover means (36 of Fig. 1) that fits on a reservoir (10 of Fig. 1) with a securing means (20 and 51 of Fig. 1) of rotating the cover means past a predetermined stop to block reverse rotation. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Winn by including a cover means with securing means that blocks reverse rotation as disclosed by Ostrowsky so as to deny access to children (see Ostrowsky col. 1 lines 5-10). The apparatus of Winn as modified by Ostrowsky inherently performs the method step of Claim 28 when used.

As to Claim 29, Winn as modified by Ostrowsky further disclose application of a force to a portion of the cover means to enable positive rotation to release it from the reservoir (see Ostrowsky col. 4 lines 12-33).

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Paulson discloses in the prior art an application with a cover; Summers ('743) and Summers (442) disclose in the prior art various child proof caps.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose telephone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The fax phone numbers for the

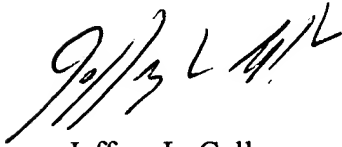
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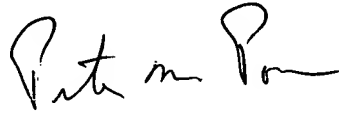
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Technology Center where this application or proceeding is assigned are 703.305.7687,  
703.305.3597, and 703.306.4195.

Any inquiry of a general nature or relating to the status of this application or proceeding  
should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner



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